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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,885	02/20/2004	Charles Edward Milner		4214

7590 05/18/2006
MICHAEL L. MALOTT
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EXAMINER

GRAYSAY, TAMARA L

ART UNIT PAPER NUMBER

3636

DATE MAILED: 05/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/781,885

Applicant(s)

MILNER ET AL.

Examiner

Tamara L. Graysay

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-16 is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☒ Claim(s) 17 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: 37 CFR 1.121 (3 pages).

DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

The references have been cited by the Office on the attached form PTO-892.

Oath/Declaration

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not identify the citizenship of each inventor. In the Citizenship box, where both applicants have entered "YES" the country of citizenship must be indicated.

Allowable Subject Matter

3. Claims 1-16 are allowed.
4. This application is in condition for allowance except for the following formal matters:

a. Drawings

The drawings are objected to because of the following:

- (1) They fail to comply with 37 CFR 1.84(l) because every line (FIGS. 1-3) is not sufficiently dense and dark, and uniformly thick and well-defined.
- (2) They fail to comply with 37 CFR 1.84(m) because solid black shading (FIGS. 1-2) is not permitted.
- (3) They fail to comply with 37 CFR 1.84(p)(5) because they do not include the following reference character(s) mentioned in the description: "12" (P.5, L.13) and "19" (P.5, L.13 and 16).
- (4) They fail to comply with 37 CFR 1.84(u)(2) because the view numbers are not larger than the numbers used for reference characters.
- (5) The arrowed lead line for reference character 8 in FIG. 1 appears to be misdirected to the connector rather than the front tube.
- (6) The arrowed lead line for reference character 7 in FIG. 1 appears to be misdirected to the connector rather than the top tube.
- (7) The arrowed lead line for reference character 8 in FIG. 3 appears to be misdirected to the connector rather than the front tube.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may

be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

b. Claim Objections

- (1) Claim 1, line 10: [the upper the tubing] should be upper tubing
- (2) Claim 1, line 13: [means for attachment] should be first means for attachment
- (3) Claim 1, lines 14-15: [the upper the tubing] should be upper tubing
- (4) Claim 1, line 23: [means for holding] should be first means for holding
- (5) Claim 1, line 24: [means for holding] should be second means for holding
- (6) Claim 1, line 25: [means for connecting top tube to rear tube] should be means for connecting said first means for attachment to said means for supporting
- (7) Claim 1, line 34: [means for attachment] should be second means for attachment
- (8) Claim 5, line 2: [the upper the tubing] should be upper tubing
- (9) Claim 6, line 2, [means for attachment] should be first means for attachment
- (10) Claim 9, line 2: [means for holding] should be first means for holding
- (11) Claim 10, line 2: [means for holding] should be second means for holding
- (12) Claim 11, line 2: [means for connecting top tube to rear tube] should be means for connecting said first means for attachment to said means for supporting

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(13) Claim 14, line 2: [means for attachment] should be second means for attachment

(14) The words in the body of claim 16 should be lower case, i.e., not capitalized.

(15) Claim 16, line 10: [the upper the] should be upper

(16) Claim 17 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 16. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k). In the present application claims 16 and 17 are duplicates, therefore, one of the claims must be deleted.

Attached is a copy of 37 CFR 1.121, including 37 CFR 1.21(c) which explains the manner of making amendments to the claims. Care should be taken to ensure compliance with the rule. *For example*, the proper status identifier must be in parenthesis after the claim number, the claim listing must begin on a separate page, and the proper markings must be present if applicant is amending the claims rather than filing new claims.

Prosecution on the merits is closed in accordance with the practice under *Ex parte*

Quayle, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- A1: Smith lacks the tubing framework, means for connecting suction cup assembly to frame assembly or eye end, means for connecting or t-bracket, and means for attaching or spring clip fastener.
- B1: Becker lacks the means for connecting suction cup assembly to frame assembly or eye end, first means for holding frame upright or front strap, second means for holding frame upright or rear strap, and means for providing easy assembly or tube coupling.
- C1: Carmichael lacks the first means for attachment or top tube, means for connecting or t-bracket, means for connecting the two sides or back tube, means for attaching or spring clip fastener, and means for providing non-fastener attachment or suction cup.
- D1: Wang teaches a suction cup (3, 33).
- E1: Strother teaches a tube coupling (FIG. 3, 6).
- F1: Mitchell teaches a shade (33, 34) and upright tube (27, 28).
- G1: Sporta teaches an adjustable strap and snap hook (FIG. 4).
- H1: Yang teaches a snap hook (62 in FIG. 3).
- I1: Ehnes teaches a shade (15) and upright tube (16, 20).
- J1: Pedersen lacks the means for adapting or bushing, means for connecting or t-bracket, means for connecting the two sides or back tube, and means for providing non-fastener attachment or suction cup.
- K1: Miller lacks the means for adapting or bushing, means for connecting suction cup assembly to frame assembly or eye end, means for connecting the two sides or back tube, the second means for attachment or front tube, means for attaching or spring clip fastener, and means for providing non-fastener attachment or suction cup.
- L1: Scott teaches a shade (26, 27) and upright tube (2).
- M1: Perret teaches a shade (3), upright tube (5a, 5b), and front strap (9).
- N1: Frey lacks the means for connecting or t-bracket, means for attaching or spring clip fastener, and means for providing non-fastener attachment or suction cup.
- A2: Menzer lacks the means for connecting suction cup assembly to frame assembly or eye end, means for providing non-fastener attachment or snap hook, means for connecting or t-bracket, means for connecting the two sides or back tube, means for attaching or spring clip fastener, and means for providing non-fastener attachment or suction cup.
- B2: Doolittle teaches a shade (49), an upright tube (53), and a top tube (51).

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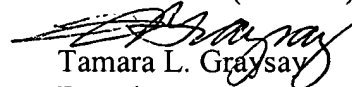
- C2: Clawson lacks the means for connecting suction cup assembly to frame assembly or eye end, means for providing non-fastener attachment or snap hook, means for providing easy assembly or tube coupling, means for connecting or t-bracket, means for connecting the two sides or back tube, and means for providing non-fastener attachment or suction cup.
- D2: Mullally lacks the means for connecting suction cup assembly to frame assembly or eye end, first means for attachment or top tube, means for providing non-fastener attachment or snap hook, means for providing easy assembly or tube coupling, means for connecting or t-bracket, means for connecting the two sides or back tube, means for attaching or spring clip fastener, and means for providing non-fastener attachment or suction cup.
- E2: Meldrum teaches an eye end (FIG. 6).
- F2: McWane lacks the means for connecting suction cup assembly to frame assembly or eye end, first means for attachment or top tube, means for providing non-fastener attachment or snap hook, means for providing easy assembly or tube coupling, means for connecting or t-bracket, means for connecting the two sides or back tube, means for attaching or spring clip fastener, and means for providing non-fastener attachment or suction cup.
- G2: Cushman lacks the bushing, means for connecting suction cup assembly to frame assembly or eye end, means for providing non-fastener attachment or snap hook, means for providing easy assembly or tube coupling, means for connecting or t-bracket, means for connecting the two sides or back tube, means for attaching or spring clip fastener, and means for providing non-fastener attachment or suction cup.
- H2: Safford lacks the bushing, means for providing non-fastener attachment or snap hook, means for providing easy assembly or tube coupling, means for connecting or t-bracket, means for connecting the two sides or back tube, means for attaching or spring clip fastener, and means for providing non-fastener attachment or suction cup.
- I2: Bartholomew lacks the means for providing non-fastener attachment or snap hook, means for connecting or t-bracket, means for attaching or spring clip fastener, and means for providing non-fastener attachment or suction cup.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamara L. Graysay whose telephone number is 571-272-6728. The examiner can normally be reached on Mon - Fri from 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Cuomo, can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Tamara L. Graysay 5/14/06
Examiner
Art Unit 3636

20060513

§ 1.121

CONSOLIDATED PATENT RULES

§ 1.121 Manner of making amendments in applications.

(a) *Amendments in applications, other than reissue applications.* Amendments in applications, other than reissue applications, are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made.

(b) *Specification.* Amendments to the specification, other than the claims, computer listings (§ 1.96) and sequence listings (§ 1.825), must be made by adding, deleting or replacing a paragraph, by replacing a section, or by a substitute specification, in the manner specified in this section.

(1) *Amendment to delete, replace, or add a paragraph.* Amendments to the specification, including amendment to a section heading or the title of the invention which are considered for amendment purposes to be an amendment of a paragraph, must be made by submitting:

(i) An instruction, which unambiguously identifies the location, to delete one or more paragraphs of the specification, replace a paragraph with one or more replacement paragraphs, or add one or more paragraphs;

(ii) The full text of any replacement paragraph with markings to show all the changes relative to the previous version of the paragraph. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strikethrough cannot be easily perceived;

(iii) The full text of any added paragraphs without any underlining; and

(iv) The text of a paragraph to be deleted must not be presented with strike-through or placed within double brackets. The instruction to delete may identify a paragraph by its paragraph number or include a few words from the beginning, and end, of the paragraph, if needed for paragraph identification purposes.

(2) *Amendment by replacement section.* If the sections of the specification contain section headings as provided in § 1.77(b), § 1.154(b), or § 1.163(c),

amendments to the specification, other than the claims, may be made by submitting:

(i) A reference to the section heading along with an instruction, which unambiguously identifies the location, to delete that section of the specification and to replace such deleted section with a replacement section; and;

(ii) A replacement section with markings to show all changes relative to the previous version of the section. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived.

(3) *Amendment by substitute specification.* The specification, other than the claims, may also be amended by submitting:

(i) An instruction to replace the specification; and

(ii) A substitute specification in compliance with §§ 1.125(b) and (c).

(4) *Reinstatement of previously deleted paragraph or section.* A previously deleted paragraph or section may be reinstated only by a subsequent amendment adding the previously deleted paragraph or section.

(5) *Presentation in subsequent amendment document.* Once a paragraph or section is amended in a first amendment document, the paragraph or section shall not be represented in a subsequent amendment document unless it is amended again or a substitute specification is provided.

(c) *Claims.* Amendments to a claim must be made by rewriting the entire claim with all changes (e.g., additions and deletions) as indicated in this subsection, except when the claim is being canceled. Each amendment document that includes a change to an existing claim, cancellation of an existing claim or addition of a new claim, must include a complete listing of all claims ever presented, including the text of all pending and withdrawn claims, in the application. The claim listing, including the text of the claims, in the amendment document will serve to replace all prior versions of the claims, in the application. In the

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claim listing, the status of every claim must be indicated after its claim number by using one of the following identifiers in a parenthetical expression: (Original), (Currently amended), (Canceled), (Withdrawn), (Previously presented), (New), and (Not entered).

(1) *Claim listing.* All of the claims presented in a claim listing shall be presented in ascending numerical order. Consecutive claims having the same status of “canceled” or “not entered” may be aggregated into one statement (e.g., Claims 1–5 (canceled)). The claim listing shall commence on a separate sheet of the amendment document and the sheet(s) that contain the text of any part of the claims shall not contain any other part of the amendment.

(2) *When claim text with markings is required.* All claims being currently amended in an amendment paper shall be presented in the claim listing, indicate a status of “currently amended,” and be submitted with markings to indicate the changes that have been made relative to the immediate prior version of the claims. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived. Only claims having the status of “currently amended,” or “withdrawn” if also being amended, shall include markings. If a withdrawn claim is currently amended, its status in the claim listing may be identified as “withdrawn—currently amended.”

(3) *When claim text in clean version is required.* The text of all pending claims not being currently amended shall be presented in the claim listing in clean version, i.e., without any markings in the presentation of text. The presentation of a clean version of any claim having the status of “original,” “withdrawn” or “previously presented” will constitute an assertion that it has not been changed relative to the immediate prior version, except to omit markings that may have been present in the immediate prior version of the claims of the status of “withdrawn” or “previously presented.” Any claim added by amendment

must be indicated with the status of “new” and presented in clean version, i.e., without any underlining.

(4) *When claim text shall not be presented; canceling a claim.*

(i) No claim text shall be presented for any claim in the claim listing with the status of “canceled” or “not entered.”

(ii) Cancellation of a claim shall be effected by an instruction to cancel a particular claim number. Identifying the status of a claim in the claim listing as “canceled” will constitute an instruction to cancel the claim.

(5) *Reinstatement of previously canceled claim.* A claim which was previously canceled may be reinstated only by adding the claim as a “new” claim with a new claim number.

(d) *Drawings:* One or more application drawings shall be amended in the following manner: Any changes to an application drawing must be in compliance with § 1.84 and must be submitted on a replacement sheet of drawings which shall be an attachment to the amendment document and, in the top margin, labeled “Replacement Sheet”. Any replacement sheet of drawings shall include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is amended. Any new sheet of drawings containing an additional figure must be labeled in the top margin as “New Sheet”. All changes to the drawings shall be explained, in detail, in either the drawing amendment or remarks section of the amendment paper.

(1) A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be included. The marked-up copy must be clearly labeled as “Annotated Sheet” and must be presented in the amendment or remarks section that explains the change to the drawings.

(2) A marked-up copy of any amended drawing figure, including annotations indicating the changes made, must be provided when required by the examiner.

(e) *Disclosure consistency.* The disclosure must be amended, when required by the Office, to correct inaccuracies of description and definition, and to secure substantial correspondence between the claims, the remainder of the specification, and the drawings.

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(f) *No new matter.* No amendment may introduce new matter into the disclosure of an application.

(g) *Exception for examiner's amendments.* Changes to the specification, including the claims, of an application made by the Office in an examiner's amendment may be made by specific instructions to insert or delete subject matter set forth in the examiner's amendment by identifying the precise point in the specification or the claim(s) where the insertion or deletion is to be made. Compliance with paragraphs (b)(1), (b)(2), or (c) of this section is not required.

(h) *Amendment sections.* Each section of an amendment document (e.g., amendment to the claims, amendment to the specification, replacement drawings, and remarks) must begin on a separate sheet.

(i) *Amendments in reissue applications.* Any amendment to the description and claims in reissue applications must be made in accordance with § 1.173.

(j) *Amendments in reexamination proceedings.* Any proposed amendment to the description and claims in patents involved in reexamination proceedings must be made in accordance with § 1.530.

(k) *Amendments in provisional applications.* Amendments in provisional applications are not usually made. If an amendment is made to a provisional application, however, it must comply with the provisions of this section. Any amendments to a provisional application shall be placed in the provisional application file but may not be entered.

[32 FR 13583, Sept. 28, 1967; 46 FR 29183, May 29, 1981; para. (e), 49 FR 555, Jan. 4, 1984, effective Apr. 1, 1984; revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; revised, 65 FR 54604, Sept. 8, 2000, effective Nov. 7, 2000; para. (i) revised, 65 FR 76756, Dec. 7, 2000, effective Feb. 5, 2001; revised, 68 FR 38611, June 30, 2003, effective July 30, 2003; para. (d) revised, 69 FR 56481, Sept. 21, 2004, effective Oct. 21, 2004]

§ 1.122 [Reserved]

[24 FR 10332, Dec. 22, 1959; para. (b), 49 FR 48416, Dec. 12, 1984, effective Feb. 11, 1985; removed and reserved, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997]

§ 1.123 [Reserved]

[48 FR 2712, Jan. 20, 1983, effective Feb. 27, 1983; 49 FR 555, Jan. 4, 1984, effective Apr. 1, 1984; amended, 58 FR 38719, July 20, 1993, effective Oct. 1, 1993; removed and reserved, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997]

§ 1.124 [Reserved]

[Removed and reserved, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997]

§ 1.125 Substitute specification.

(a) If the number or nature of the amendments or the legibility of the application papers renders it difficult to consider the application, or to arrange the papers for printing or copying, the Office may require the entire specification, including the claims, or any part thereof, be rewritten.

(b) Subject to § 1.312, a substitute specification, excluding the claims, may be filed at any point up to payment of the issue fee if it is accompanied by a statement that the substitute specification includes no new matter.

(c) A substitute specification submitted under this section must be submitted with markings showing all the changes relative to the immediate prior version of the specification of record. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived. An accompanying clean version (without markings) must also be supplied. Numbering the paragraphs of the specification of record is not considered a change that must be shown pursuant to this paragraph.

(d) A substitute specification under this section is not permitted in a reissue application or in a reexamination proceeding.

[48 FR 2712, Jan. 20, 1983, effective Feb. 27, 1983; revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; paras. (b)(2) and (c) revised, 65 FR 54604, Sept. 8, 2000, effective Nov. 7, 2000; paras. (b) and (c) revised, 68 FR 38611, June 30, 2003, effective July 30, 2003]